article, 27 W. VA. L. QUART. 301. In *Mostyn* v. *Fabrigas,* (1774), 1 Cowp. 161, Lord Mansfield pointed out the lack of substantial difference between local and transitory actions where "the whole that is prayed is a reparation in damages, or satisfaction to be made by process against the person or his effects, within the jurisdiction of the Court." He also referred to cases at *nisi prius* involving injuries to foreign lands in which he, as judge, overruled the objection that the action being local, the English courts had no jurisdiction, his ruling being based "upon this principle, namely, that the reparation here was personal, and for damages, and that otherwise there would be a failure of justice". The English courts, however, declined to follow Lord Mansfield's suggestion. In *Doulson* v. *Matthews,* (1792), 4 T. R. 503, where trespass was brought in England for injuries to land in Canada, the court rendered the following opinion: "It is now too late for us to enquire whether it were wise or politic to make a distinction between transitory and local actions: it is sufficient for the courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local." Though the distinction between local and transitory actions was abolished in England by the Court Rules adopted in 1873, 36 & 37 Victoria, 1873, c. 66, Rules of Procedure, 28, it was subsequently held that trespass could not be brought in England for injuries to land in a foreign jurisdiction. *British South Africa Co.* v. *Companhia de Mozambique* [1893], A. C. 602. But see the opinion of the court which was reversed: *Companhia de Mozambique* v. *British South Africa Co.,* [1892] 2 Q. B. 406, 415. The language and logic of the opinion in *Doulson* v. *Matthews, supra,* rendered in 1792, expresses quite accurately the view supported by the great majority of American courts. The leading American case admits that the rule is technical. (Marshall, J.) *Livingston* v. *Jefferson,* 1 Brock 203, Fed. Cas. No. 8411. Though the common law rule has been severely criticised even by the courts adopting it, only one court has absolutely rejected it. In *Little* v. *Chicago, etc., Ry. Co.,* 65 Minn. 48, the court, quoting Lord Mansfield's opinion with approval, refuses to support the common law rule because "it is purely technical, wrong in principle, and in practice often results in a total denial of justice." In some states it has been abolished by statute. Consolidated Laws of New York, Real Property Law, § 536. The courts have grasped at straws to remove cases from the rule. See cases referred to in *Little* v. *Chicago, etc., Ry. Co., supra,* and the exceptions to the rule noted in the opinion in the principal case. In *Huntington* v. *Attrill,* 146 U. S. 657, the Supreme Court of the United States suggested that there was no inherent reason for viewing trespass to real property as local, and that the rule was based rather upon convention and custom than upon a fundamental want of jurisdictional power. See also *Peyton* v. *Desmond,* 129 Fed. 1.

LANDLORD AND TENANT—CREATION OF NEW TENANCY UPON WAIVER OF NOTICE TO QUIT.—A controversy arising between the defendants and sublessees over an increase in rent, defendants gave notice to quit, which notice

was cancelled by the defendants before its expiration upon agreement by the sub-lessees to pay the increased rent. *Held,* that the notice to quit determined the sub-lease, and that waiver of the notice with an agreement to go on at the increased rent created a new tenancy, thus constituting a breach of defendants' covenant in the head-lease not to sub-let without leave, and entitling plaintiffs, the head lessors, to reënter. *Freeman* v. *Evans* [1922], 1 Ch. 36.

The principal case is controlled by a *dictum* in *Blyth* v. *Dennett* (1853), 13 C. B. 178, and the decision in *Tayleur* v. *Wildin,* L. R. 3 Ex. 303. The decision there was that a notice to quit determines the tenancy upon the expiration of the notice, and a waiver of the notice creates a new tenancy taking effect upon the expiration of the old one. It was there said: "Whether the notice to quit is given by the landlord or the tenant, the party to whom it is given is entitled to insist upon it, and it cannot be withdrawn without the consent of both." But an invalid or insufficient notice will not determine the tenancy. *Holme* v. *Brunskill* (1878), 3 Q. B. D. 495. The above stated doctrine is adopted as the English rule by WOODFALL, LANDLORD AND TENANT, p. 443 [Ed. 20], and FOA, LANDLORD AND TENANT, p. 606 [Ed. 5]. Where the waiver comes after the date for the expiration of the notice, it is evident the only effect can be the creation of a new tenancy, but the Court of Appeal in Ireland declined to accept the doctrine that the only way to obviate the effect of a notice to quit was by the creation of a new tenancy, and in *Inchiquin* v. *Lyons,* 20 L. R. Ir. 474, held that a notice to quit which during its currency was abandoned by consent of the parties did not *per se* put an end to a tenancy from year to year. This view has much support in this country. TIFFANY, LANDLORD AND TENANT, § 205. And many cases, probably the majority, in this country say that the party giving the notice may waive it at his option before it has been acted upon. *Collins* v. *Canty,* 6 Cush. (Mass.) 415; *Whitney* v. *Swett,* 22 N. H. 10; *Supplee* v. *Timothy,* 124 Pa. St. 375; *Arcade Invest. Co.* v. *Gieriet,* 99 Minn. 277. But see *contra, Western Union Tel. Co.* v. *Penn. R. Co.,* 120 Fed. 362, in which the distinction was made that a withdrawal of a notice to quit was not, like a waiver of forfeiture, the act of one party, but required the assent of both. In the principal case the court admit the decision is technical, but justify it largely on the ground of redress to an injured third party, the defendants having violated the same covenant under their previous yearly tenancy. And in *Tayleur* v. *Wildin* the action was against a third party, guarantor of the rent. There is an attempt to reconcile these cases with *Inchiquin* v. *Lyons,* where the point was raised by the lessor, by saying that as between the parties and anyone else it may be quite right to consider the old tenancy at an end, but not as between lessor and lessee, since the effect of such holding would be to turn present tenants into future tenants and destroy valuable rights annexed to old tenancies. It would seem conducive to uncertainty and confusion to make the question depend upon whether or not the point was raised by a third party. The better rule would

seem to be that, where the notice is cancelled with the consent of both parties before the date set for its expiration, a new tenancy is not necessarily created.

NEGLIGENCE—RES IPSA LOQUITUR.—D laundry company was the lessee of P's premises, which were damaged by an explosion of the laundry boiler. D casualty company had inspected the boiler and issued a contract of insurance thereon to the laundry company. In an action against both it was *held,* the doctrine of *res ipsa loquitur* applied to the laundry company, which was in exclusive control of the boiler, but did not apply to the casualty company because it was not in control. *Kleinman* v. *Banner Laundry Company et al.* (Minn., 1921), 186 N. W. 123.

The fact that the Minnesota court applied the doctrine of *res ipsa loquitur* to a boiler explosion is of no particular importance in view of the same holding in an earlier case. *Fay* v. *Davidson,* 13 Minn. 523. For a collection of cases indicating that the modern tendency is to the contrary, see note in 113 Am. St. R. 986. The interesting point is the distinction made between the laundry company and the casualty company. The report does not indicate upon what theory the casualty company was joined in the action. It may have been for its own possible negligence in inspection, etc. *Van Winkle* v. *American Steam Boiler Co.,* 52 N. J. L. 240. If such was the case, the distinction appears to be sound. No inference of negligence can logically be drawn against it from the mere fact that the boiler exploded while in the exclusive control of another. Application of the doctrine would result in a finding of negligence, but would not determine whose negligence it was. However, the casualty company may have been joined as the real party in interest by virtue of the contract of insurance, the terms of which do not appear in the report. If this was the case, and the casualty company was liable for the negligence of the assured, the distinction which the court makes would appear to be erroneous. Although the cases are replete with declarations that the doctrine of *res ipsa loquitur* has no application unless the defendant was in exclusive control, yet in all these cases, so far as has been found, the negligence sought to be inferred was the negligence of the defendant. *McGillivray* v. *Grt. North. Ry. Co.,* 138 Minn. 278; *Transportation Co.* v. *Downer,* 11 Wall. (U. S.) 129; *Scott* v. *Dock Co.,* 3 Hurl. & C. 596. No case has been found in which the question has been squarely raised, but it is submitted that the doctrine is applicable on principle against anyone who is liable for the negligence of another if it would be applicable against that other.

SALES—RIGHTS OF THIRD PARTIES UNDER WARRANTIES.—In a suit by the vendee against the vendor for failure of vendor's warranty of title the court said by way of *dictum:* "Warranties of chattels are available only between the parties to the contract and not in favor of third parties." *Crocker* v. *Barron* (Mo., 1921), 234 S. W. 1032.

This statement has been generally held to express the law. 14 MICH. L. REV. 264; WILLISTON, CONTRACTS, § 998; WILLISTON, SALES, § 244; *Talley*